

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of)
))
GUNTER KOHLKE)
))
currently incarcerated at:)
))
Allenwood Federal Correctional Institution)
Inmate No. 10080-196)
P.O. Box 1500)
White Deer, Pennsylvania 17887)
))
and with an address at:)
))
Im Dankholz 25)
79798 Jestetten, Germany,)
))

ORDER DENYING EXPORT PRIVILEGES

On July 18, 2002, a U.S. District Court in the Eastern District of New York convicted Gunter Kohlke (“Kohlke”) of violating Section 38 of the Arms Export Control Act (22 U.S.C. § 2778 (2000)) (“AECA”). Specifically, the Court found that Kohlke knowingly and willfully attempted to export items on the United States Munitions List, from the United States to Switzerland, without first obtaining the required approval from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”) provides that, at the discretion of the Secretary

¹ From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive

of Commerce,² no person convicted of violating any of a number of federal criminal statutes including the AECA shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) (“Regulations”), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person’s export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Kohlke’s conviction for violating the AECA, and after providing notice and an opportunity for Kohlke to make a written submission to the Bureau of Industry and Security before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, and having received no submission from Kohlke, following consultations with the Director, Office of Export Enforcement, I have decided to deny Kohlke’s export privileges for a period of 10 years from the date of his conviction. The 10-year period

Presidential Notices, the most recent being that of August 7, 2003 (68 Fed. *Reg.* 47833 (August 11, 2003)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

² Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 1 l(h) of the Act.

ends on July 18, 2012. I have also decided to revoke all licenses issued pursuant to the Act in which Kohlke had an interest at the time of his conviction.

Accordingly, it is hereby

ORDERED

- I. Until July 18, 2012, Gunter Kohlke, currently incarcerated at: Allenwood Federal Correctional Institution, Inmate No. 10080-196, P.O. Box 1500, White Deer, Pennsylvania 17887, and with an address at: Im Dankholz 25, 79798 Jestetten, Germany, (“the denied person”) and, when acting in behalf of Kohlke, all of his successors or assigns, representatives, agents and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the EAR, including, but not limited to:
 - A. Applying for, obtaining, or using any license, License Exception, or export control document;
 - B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.
- II. No person may, directly or indirectly, do any of the following:
 - A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
 - B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;
 - C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the Regulations that has been exported from the United States;
 - D. Obtain from a person subject to this order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
 - E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if

such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Gunter Kohlke by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 18, 2012.

VI. In accordance with Part 756 of the Regulations, Kohlke may file an appeal from this Order with the Under Secretary for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Kohlke. This Order shall be published in the Federal Register.

Date:

Sept 5, 2003



Eileen M. Albanese
Director
Office of Exporter Services